TABLE OF CASES.

	PAGE
Aladdin Petroleum Corp. v. State of Oklahoma, No. 32625, Oklahoma Supreme Court	5, 6
Brewer-Elliott Oil and Gas Co. v. United States, 260 U. S. 77	2
L. D. Oldham v. State of Oklahoma, No. 32629, Oklahoma Supreme Court	5, 6
Oklahoma v. Texas, 258 U. S. 574	2
Shore v. Shell Petroleum Corp., 60 F. (2d) 1, cert. den. 287 U. S. 656	3, 4
Wear v. Kansas, 245 U. S. 154	1, 3

SUPREME COURT OF THE UNITED STATES,
October Term, 1946.

No. 715.

STATE OF OKLAHOMA AND CHAMPLIN REFINING COMPANY, *Petitioners,*

vs.

UNITED STATES OF AMERICA.

PETITION *for* REHEARING.

Comes now the State of Oklahoma and the Champlin Refining Company, petitioners, complaining of the judgment of this Court in the above entitled action and ask for a rehearing, on grounds as follows:

I.

Neither this Court nor the Circuit Court of Appeals noticed the principal feature of petitioners' evidence, to-wit, that the State of Kansas, by a decision of this Court,[1] has been awarded title to the *entire* beds of both the Kansas and Arkansas Rivers, *regardless of the fact that both rivers are actually non-navigable and regardless as to whether the riparian patents were issued before statehood*

1. Wear v. Kansas, 245 U. S. 154.

or after. Nor did either court decide petitioners' contention based on such evidence, to-wit, that the doctrine of equality of sovereign states under the Constitution requires that Oklahoma be accorded the same rights of ownership with respect to the bed of the Arkansas River as have been granted to her sister state.

It is useless to indulge in fine distinctions in language. The plain fact is that Kansas owns and is exercising dominion and control over the *entire* beds of both the Kansas and Arkansas Rivers and that the state is receiving all of the fruits of such ownership for the benefit of its whole people. We are faced in this case "with a condition and not a theory."

Yet, when the State of Oklahoma asks that identical ownership be approved for its people and raises in this case the most sacred issue which can be invoked by either states or individuals, *viz.*, that of equality under the Constitution, such appeal goes unremarked by this Court.

The decisions in *Brewer-Elliott Oil and Gas Company* v. *United States*[2] and *Oklahoma* v. *Texas*,[3] cited by this Court, merely hold that the Congress had authority, prior to Oklahoma statehood, to sell and dispose of portions of the rivers of Oklahoma by means of treaties with Indian tribes. The court, in both of these cases, however, took pains to reaffirm the general rule, that the *state law governs* in the construction of patents *which do not expressly cover the river bed,* and made it plain that were it not for the *express conveyances* of the segments of river beds involved in those cases, the ownership of the state would have been upheld. Nothing could be more obvious or certain.

---

2. 260 U. S. 77.
3. 258 U. S. 574.

The portion of the river bed involved in the present case was never conveyed to any Indian Tribe nor to any other person; therefore, when the petitioners raise the issue of equality between the States of Oklahoma and Kansas, the relevancy of cases which merely upheld the right of Congress to make conveyances of river beds prior to statehood, is not clear.

In *Wear* v. *Kansas*,[4] this Court "once and for all" awarded the bed of the Kansas River to the State of Kansas, regardless of the fact that the river was concededly non-navigable in fact and regardless of the circumtances that the riparian patents involved were issued prior to statehood.

In *Shore* v. *Shell Petroleum Corporation*,[5] the Circuit Court of Appeals relied upon *Wear* v. *Kansas*, and approved a decision of the United States District Court which had adopted the "unvarying" rule that the bed of the Arkansas River belongs to the State of Kansas. This Court denied *certiorari*.[6]

In the present case, however, this Court and the Circuit Court of Appeals have declined to apply the law of Oklahoma that the bed of the Arkansas River (excepting those portions expressly conveyed to Indian tribes before statehood) belongs to the State of Oklahoma. On the contrary, distinctions in procedure have been drawn, which result in the condition that the particular segments of the river bed involved in this action have been held to belong to private riparian owners whereas the entire bed of the same river in Kansas has been held to belong to the public.

When the State of Oklahoma has earnestly sought in

4. 245 U. S. 154.
5. 60 F. (2d), p. 1.
6. 287 U. S. 656.

this Court an answer to the question as to why such an unequal condition should exist between two sovereign states, this Court has remained silent. Because of this silence, Oklahoma is concerned and aggrieved at the lack of an answer.

II.

Since this Court affirmed the decision of the Circuit Court of Appeals without opinion, it must be deemed to have adopted the reasoning of the Circuit Court opinion.

That opinion rests upon the fact that the riparian patents in the case at bar had been issued prior to statehood. However, since the Circuit Court of Appeals has upheld the right of the State of Kansas to assert title to the Arkansas River bed in a case[7] in which the riparian patents were issued after statehood, it must be assumed that the same treatment would be accorded Oklahoma and that the segments of the Arkansas River adjoining riparian lots patented after statehood, will likewise be held to belong to our state. This being true, it is obvious from the affirmance entered in the present case, that this Court no longer believes that the title to a river bed under similar circumstances, should be decided once and for all. On the contrary, the title to each segment of the river bed must be determined upon the facts of each particular case. Any interpretation other than the one just stated would lead to the incredible result that the river beds in Kansas are awarded to that state in their entirety, *regardless of the facts,* whereas the State of Oklahoma is denied title to its river beds in their entirety, *regardless of the facts.*

Since, therefore, the title to each segment of river bed is to be decided anew in each particular case, the facts in

7. Shore v. Shell Petroleum Corporation, 60 F. (2d), p. 1.

the cases now before the Supreme Court of Oklahoma[8] would require a decision for the state, under the very opinion of the Circuit Court of Appeals which has been adopted by this Court in the present action.

This circumstance was called to the attention of this Court in petitioners' main brief at pages 15 and 16 thereof, and is obvious for the following reasons which we repeat.

The Circuit Court of Appeals first advanced the proposition that since the riparian patents in the case at bar were issued prior to statehood, they are to be governed by the common law in effect in Oklahoma territory. That court, however, recognized that in *Wear* v. *Kansas* the patents *had also been issued prior to statehood,* that the state rule of navigability was held to govern such patents, none-the-less, and that under such law the riparian owners were held to have no title to the bed.

The Circuit Court of Appeals did not overrule *Wear* v. *Kansas,* but distinguished the case at bar from that case, because of two unique facts in the present action, to-wit, (*1*) the Oklahoma Supreme Court had not adopted its rule of navigability for the Arkansas River in a case in which the Indian riparian owners in the present action were parties, and, (*2*) the trial court in the case at bar made a finding of fact that the Arkansas River is non-navigable. The Circuit Court of Appeals therefore concluded that the finding of the trial court that the Arkansas River was non-navigable is the law of the present case, *because the rule of the Oklahoma Supreme Court to the effect that the Arkansas River is navigable in law was not binding upon the Indian riparian owners, who were not parties to any case in which the state rule had been promulgated.*

---

8. Aladdin Petroleum Corporation v. State of Oklahoma, No. 32625; L. D. Oldham v. State of Oklahoma, No. 32629.

Since the law of *Wear* v. *Kansas* still stands and since the present case has turned on the procedural distinctions above noted, it is exceedingly important to note that the procedure in the cases now before the Oklahoma Supreme Court is identical with the procedure in *Wear* v. *Kansas,* and that the distinctions found by the Circuit Court of Appeals *do not exist in the state cases,* now pending.

In the state cases, the trial court did not make a finding that the Arkansas River is non-navigable in fact, but on the contrary overruled a request by the riparian owners that such finding be made, *and found, without more, that the Arkansas River is navigable under the laws of Oklahoma.*[9] This rule of navigability, if affirmed by the Oklahoma Supreme Court, will be binding upon the riparian owners in the state cases, *because it was made in a case in which those riparian owners were parties.*

Since the procedure in the cases before the State Court is identical with the procedure approved by the United States Supreme Court in *Wear* v. *Kansas,* the Supreme Court of Oklahoma could not decide for the riparian owners in the cases before it, unless it expressly overrules the doctrine of the United States Supreme Court in *Wear* v. *Kansas*—a thing which this Court has offtimes declined to do.

It must be assumed, therefore, that the law applicable to the cases now before the Oklahoma Supreme Court is the rule of *Wear* v. *Kansas* and that the riparian owners in the state cases must be denied title as in the Kansas case.

The petitioners are appreciative that under the deci-

9. Record, Supreme Court of Oklahoma, Aladdin Petr. Corp., et al., v. State of Oklahoma, et al., No. 32625, pp. 225, 245, 246; L. D. Oldham, et al., v. State of Oklahoma, et al., No. 32629, pp. 246, 266, 267.

sion of the Circuit Court of Appeals, as affirmed by this Court, there is still left to the Supreme Court of Oklahoma the authority, in its discretion, to preserve for the State of Oklahoma title to the remaining segments of the Arkansas River bed.

However, the petitioners are still of the firm opinion that Oklahoma like Kansas is entitled to its *entire* river beds, excepting only those portions expressly conveyed by Congress to Indian Tribes prior to statehood; and for such reasons request a rehearing in order that the doctrine of equality of states may be re-affirmed by this Court.

Respectfully submitted,

MAC Q. WILLIAMSON,
Attorney for the State of Oklahoma;

J. WALKER FIELD,
Assistant Attorney General for the State of Oklahoma;

L. L. CORN,
Counsel for the Commissioners of the Land Office of the State of Oklahoma;

HARRY O. GLASSER,
NATHAN SCARBITT,
E. S. CHAMPLIN,
Attorneys for Champlin Refining Company.

Mac Q. Williamson, as counsel for petitioners herein, does hereby certify that the within and foregoing Petition for Rehearing is presented in good faith and not for delay.

.....,
MAC Q. WILLIAMSON.